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IN THE

Supreme Court of the United States

No. 31. October Term, 1935.

G. S. ROGERS, doing business as Rex Duplex Fitting Company, and R. W. DUSENBERRY,

Defendant-Petitioners,

v.

ALEMITE CORPORATION,

Plaintiff-Respondent.

BRIEF ON BEHALF OF DEFENDANT-PETITIONERS.

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BRIEF ON BEHALF OF DEFENDANT-PETITIONERS.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

FOREWORD.

This case comes before the Court in the form of an equity suit brought by plaintiff-respondent against defendant-petitioner for the alleged *contributory* infringement of two different groups or sets of claims of the patent in suit;—each group of claims being drawn to an alleged *combination,* on one hand, of a device containing some assertedly improved constructional features, and, on the other

hand, three or four other separate and distinct, and admittedly old and unpatentable devices;—the defendants being accused of *contributory* infringement solely because of their sale of the admittedly old and unpatentable devices.

While the cause takes the form of a suit for the alleged infringement of Letters Patent, and presents precisely the same factual situation and the same question of law as in the cases of

Carbice Corporation v. American Patents Development Corporation, 283 U. S. 27; 51 Sup. Ct. 334;
*Alemite Corp. v. Lubrair Corp.** 62 F (2d) 899 (CCA 1).

yet this cause may also be well considered in the light of such decisions as

Motion Picture Patents Co. v. Universal Film Mfg. Co., 243 U. S. 502;
United Shoe Machinery Corp. v. United States, 258 U. S. 451; 42 Sup. Ct. 363.

because, while differing from the Motion Picture type of case in form, it presents the same fundamental question.

That fundamental question is whether or not it is permissible for a patent owner to monopolize, or to be freed of competition in respect to, one or several admittedly old and unpatentable devices, implements, commodities or articles of commerce, merely because he has made some improvement in the constructional features of another and wholly **separate and distinct** device, article of manufacture and commerce, which latter improved device the patent owner was able to put into general use through his commercial power and prowess and his acumen.

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* This case involves the same patent and the same issue of infringement as is involved in the case at bar.

Thus, whether the illegal result is attempted through private contracts or restrictive clauses in private contracts with those who wish to buy or use or deal in the patented device or commodity, as in the Motion Picture case and the United Shoe case, *supra,* or whether it is attempted by the more subtle method of including the old and unpatentable device, implement, commodity or article of commerce in the patent, claim by some all-inclusive generic description (along with the improved device specifically described in the claim) as in the Carbice case and the *Alemite v. Lubrair* case, *supra,* and such other familiar cases as

Morgan Envelope Co. v. Albany Paper Co., 152 U. S. 425; 38 L. Ed. 500;

General Electric v. Ohio Brass Co., 277 Fed. 917 (CCA 3);

Kodell Electric v. Warren Telechron Co., 62 Fed. (2d) 692 (CCA 6);

Harvey Hubbell, Inc. v. General Electric, 267 Fed. 564 (CCA 2),

the result is the same and is equally abhorrent to both the patent law as well as to the anti-trust laws.

In the Motion Picture type case and the United Shoe Machinery type case, the foundation of the illegal result is an improper clause in a private contract in respect to patented devices for which the patent owner has succeeded in creating a substantial demand, while in the *contributory* infringement type case, represented by the Morgan Envelope case, the Harvey Hubbell case, the General Electric case, the Carbice case, the Lubrair case, and the Kodell case, *supra,* the foundation of the illegal result is an improper claim in a patent which sometimes is regarded as a contract between the inventor and the Government.

OPINIONS OF THE COURTS BELOW.

The per curiam opinion of the Circuit Court of Appeals for the Third Circuit on the appeal (which affirms the District Court) is reported in 74 Fed. (2d) 1019. The opinion of said Court on the Petition for Rehearing is unreported but is reproduced in the transcript of record filed herewith.

The opinion of the District Court is reported in 5 Fed. Supp. 940.

JURISDICTION.

The grounds on which the jurisdiction of this Court is invoked are:

1. The date of the judgment to be reviewed was December 18, 1934, and of the denial of the Petition for Rehearing January 25, 1935.

2. The judgment was rendered in a suit in equity brought under the Patent Statutes to determine the issues of validity and infringement of Letters Patent for invention issued by virtue of Section 4886, R. S.

3. The lower Courts ruled that an inventor of an improvement* in one device can also acquire a monopoly of **all** other (admittedly old and unpatentable) complementary or cooperative devices with which the inventor's allegedly improved device is normally used and with which other

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* and one which, at best, is a very trivial improvement, if, in fact, an improvement at all.

like devices (minus the alleged improvement) have always been used in the past;—merely by making an all-inclusive **generic** reference to such other **old** devices in the patent claim which also **specifically** recites the inventor's allegedly improved device, and then through usual commercial means bringing about the wide-spread use of the improved device of the claim to raise the inference that the defendant's sale of the **old** and unpatentable devices **generically** included in the claim is with the intention that they be used in conjunction with plaintiff's improved device also recited in the claim; in so-called *contributory* infringement of such "*combination*" claim.

4. The statute under which jurisdiction is invoked is Section 240 (a) of the Judicial Code, 28 U. S. C. Sec. 347, as amended by the Act of February 13, 1925.

5. Cases believed to sustain the jurisdiction are:

I. T. S. Co. v. Essex, 272 U. S. 429; 47 S. Ct. 136;
Alexander Milburn Co. v. Davis-Bournoville Co., 270 U. S. 390; 46 S. Ct. 324;
Concrete Appliances Co. v. Gomery, 269 U. S. 177; 46 S. Ct. 42;
Gypsey Oil Co. v. Escoe, 275 U. S. 498; 48 S. Ct. 112;
Carbice Corp. of Amerita v. American Patents Development Corp. and another, 283 U. S. 27; 51 S. Ct. 334;
Morgan Envelope Co. v. Albany Paper Co., 152 U. S. 425; 38 L. Ed. 500;
General Electric v. Ohio Brass, 277 Fed. 917 (CCA 3);
Kodell Electric v. Warren Telechron Co., 62 Fed. (2nd) 692 (CCA 6);

and also the following cases adjudicating the patent here in suit and sustaining defendant-petitioners' contentions:—

Lyman v. Bassick, 18 Fed. (2nd) 29 (CCA 6th);
Alemite v. Lubrair, 62 Fed. (2nd) 899 (CCA 1st);
Hollingshead v. Bassick, 73 Fed. (2nd) 543 (CCA 6th).

STATEMENT OF THE CASE.

The present suit was brought in the United States District Court in and for the Western District of Pennsylvania, by the Alemite Corporation, as plaintiff, against G. S. Rogers (doing business as Rex Duplex Fitting Company) and R. W. Dusenberry, and R. H. Kidd,[1] as defendants, on Gullborg Patent No. 1,307,734 (Granted June 24, 1919), the suit being based upon **two** separate and distinct, and specifically **different** charges of *contributory* infringement;—both charges of contributory infringement predicated however upon generically similar factual situations and upon the **same legal contention.**

The Disclosure of the Patent in Suit.

The patent in suit (No. 1,307,734) discloses **two** separate and distinct mechanical devices or entities, each having[2] a separate and independent status in the art of lubrication, and the two devices having been[2] customarily used in conjunction with each other;—the relationship between these two devices being merely that each device constitutes

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1 R. H. Kidd withdrew as a defendant prior to trial; and upon order of Court the bill of complaint was taken **pro confesso** against him. For this reason, the final decree of the District Court (R., p. 184) does not include said R. H. Kidd, and said R. H. Kidd took no part in the appeal to the Circuit Court of Appeals.

2 At all times prior to the application for the patent in suit.

(broadly) the old environment in which the other device is customarily and necessarily used (much the same as an incandescent electric bulb or lamp is used with an electric socket, or an electric socket used with an electric bulb).

The Two Devices of the Patent in Suit.

1) *The "Grease-Gun."*

On one hand, the patent in suit discloses a broadly **old** lubricant-dispensing pump device, sometimes generally referred to as a "grease-gun," comprising an admittedly **old** pump (or compressor), an admittedly **old** hose and a broadly **old** "bayonet" type hose-coupler on the end of the hose; whereby temporary and quick-detachable connection may be made between the end of the grease-gun hose and any one of a plurality of admittedly **old** (or new) "bayonet" type grease-cups (or "pin-fittings") on an automobile or other machine (or on many automobiles or machines).—The otherwise or broadly **old** "bayonet" type hose-coupler of the patent in suit, has certain allegedly new and useful details of construction whereby a slight vacuum or suction is claimed to be produced within the coupler at the instant of disunion from **any** bayonet type grease-cup or so-called "pin-fitting", which alleged "suction-effect" is supposed to be conducive to greater cleanliness in the use of the grease-gun by sucking back into the hose-coupler any slight excess of grease that may otherwise exude or drip out at the instant of disunion.

2) *The "Grease-Cup."*

On the other hand, the patent in suit discloses a broadly **old** and specifically **old** and unpatented "bayonet" type

grease-cup or so-called "pin-fitting," comprising a small tubular body and having bayonet lugs or a bayonet-pin projecting from its two sides for the reception of **any old** (or new) "bayonet" type hose-coupler of **any old** (or new) grease-gun, and having a spring-pressed check valve or closure valve;—the asserted novelty of this "bayonet" type grease-cup or "pin-fitting" being the specific disposition of the valve-closing spring between the closure-valve and the bayonet-pin (which latter extends through the tubular body of the grease-cup) whereby the bayonet-pin may not only serve its normal function as a bayonet-pin, but may also at the same time act as a spring abutment on the inside of the grease-cup for giving support to the valve-closing spring. The grease-cup or "pin-fitting," of the patent in suit constitutes, per se, the subject-matter of plaintiff's earlier-filed Patent No. 1,307,733 **not** in suit (R., pp. 212-214), which contains claims addressed to precisely this asserted novelty of plaintiff's grease-cup or "pin-fitting" invention, and this specific grease-cup or "pin-fitting" also again disclosed in the patent in suit is also an **admittedly old** device both broadly as well as specifically considered.

The Claims of the Patent in Suit.

Allegedly improved Hose-Coupler **not** claimed, per se.

The patent in suit does **not** claim the so-called "suction-effect" hose-coupler, per se, because even the specific structural features or elements in the coupler (which give rise to this alleged "suction-effect") were admittedly old in bayonet type hose-couplers per se, and because the asserted utility and novelty of this "suction-effect" was claimed to be in an alleged "combination" of that hose-coupler with any old grease pump, any old hose, and any old grease-cup.

Admittedly old Grease-gun **not** claimed per se.

The patent in suit likewise does **not** claim what may be termed a "suction-effect" grease-gun, that is, a grease-gun comprising the old pump, the old hose and the "suction-effect" hose-coupler (the pump, hose and coupler being sometimes collectively referred to as the "grease-gun").

Allegedly improved Grease-cup **not** claimed per se.*

The patent in suit likewise does **not** claim the grease-cup or "pin-fitting" per se, because plaintiff, apparently recognizing the separate and independent status of grease-guns on one hand and grease-cups on the other hand, took out a separate and independent Patent No. 1,307,733 (**not** in issue) claiming this grease-cup or pin-fitting, per se, with its alleged novel disposition of the valve-closing spring between the valve-closure member and the bayonet-pin.

The alleged "combination" claimed.

All the claims of the patent in suit declared upon (as well as those not in issue) recite in each instance, an alleged "combination" of the **four** separate and distinct mechanical devices which have always* been used in conjunction with each other for the lubrication of machinery, to wit: (1) a pump; (2) a hose; (3) a hose-coupler; and (4) a grease-cup.

Some of the claims, such as Claim 8, for instance, also generically recite as a fifth mechanical element or device in this alleged "combination" the very apparatus to be lubricated, that is, the automobile or other machine.

The claims of the patent in suit declared upon divide into two groups, according to plaintiff's *two* separate and distinct charges of infringement, to wit:

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* being covered, per se, by another earlier patent not in suit.

* Long prior to the filing of the application for the patent in suit.

1. Claims 1, 2, 3, 4 and 8 reciting in detail plaintiff's specific "suction-effect" hose-coupler in alleged "combination" with **any** (old or new) pump, hose, and grease-cup and automobile (in Claim 8);—the pump, hose, grease-cup and automobile being merely generically defined in these claims.

and

2. Claims 14 and 15 reciting in detail plaintiff's specific internal construction in "bayonet" type grease-cups or so-called "pin-fittings" (which construction is claimed, per se, in plaintiff's "pin-fitting" Patent No. 1,307,733 not in suit), in alleged "combination" with **any** (old or new) pump, hose and bayonet type hose-coupler;—the pump, hose and hose-coupler being merely generically defined in these claims.

DEFENDANTS' ACCUSED DEVICES.

Defendants manufactured and sold **two** separate and distinct **devices**, each having a separate and independent status in the art of lubrication, to wit:

Grease-gun:

1) admittedly **old** and **unpatented** lubricant-dispensing pumps or so-called "grease-guns," having admittedly **old** and **unpatented** "bayonet" type hose-couplers at the free ends of their discharge hoses,

adapted to be connected onto and to force lubricant into any **old** and **unpatented** "bayonet" type grease-cups or so-called "pin-fittings," as, for instance, defendants' (and others') **old** and **unpatented** grease-cups or "pin-fittings" referred to in sub-section 2 hereinbelow,

or

adapted to be connected onto (and to force lubricant into) any alleged new and patented grease-cups or "pin-fittings" such as plaintiff's "pin-fittings" disclosed (but not claimed) in its patent in suit and claimed (per se) in its other Gullborg Patent No. 1,307,733, **not** in suit.

Grease-cup:

2) admittedly **old** and **un**patented bayonet type grease-cups or so-called "pin-fittings" having "bayonet lugs" or "pins" projecting from their sides, for coupling engagement

by any **old** and **un**patented "bayonet" type hose-coupler part of any **old** and **un**patented lubricant-dispensing pump or "grease-gun," as, for instance, defendants' (and others') **old** and **un**patented "grease-guns" referred to in subsection 1 hereinabove,

or

by any allegedly new and improved and allegedly patentable "bayonet" type hose-coupler part of an admittedly old grease-gun, such as plaintiff's so-called "suction-effect" bayonet hose couplers of the patent-in-suit, with which plaintiff's admittedly **old** grease pumps on the market are equipped.

THE CHARGES OF INFRINGEMENT.

Plaintiff has **not** charged **any*** infringement of its "suction-effect" claims or its coupler-defining claims (1, 2, 3, 4, and 8), either by reason of defendants' sale of their

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* Either direct infringement or contributory infringement.

(otherwise accused) grease-gun (which may be regarded as comprising a pump, hose, and hose-coupler), or by reason of defendants' hose-coupler per se;—plaintiff thereby conceding the fact that both defendants' "grease-guns" as well as defendants' hose-coupler, per se, are devoid of the so-called "suction-effect" or the structural features allegedly giving rise to such "suction-effect," and that defendants' grease-gun is admittedly what in this litigation may be termed as the old "**non**suction-effect" type or kind of grease-gun.

Plaintiff has likewise **not** charged **any*** infringement of its "pin-fitting" claims or "pin-fitting" defining claims (14 and 15), by reason of defendants' manufacture and sale of their (otherwise accused) "pin-fittings"; — plaintiff thereby conceding that defendants' "pin-fitting" is devoid of the structural features which are specifically recited in the "pin-fitting" defining *portions* of these claims (14 and 15).

Each of the **two** separate and distinct charges of infringement in this suit are charges of *contributory* infringement (as distinguished from direct infringement):

1. *Contributory* infringement of the "suction-effect" claims (1, 2, 3, 4, and 8) is charged **only** by reason of defendants' manufacture and sale of their **old** and **un**patented grease-cups or "pin-fitting," upon the assertion that the same are adapted and intended to have attached to them and to have lubricant forced into them by, *inter alia,* plaintiff's "suction-effect" grease-guns, that is, having the so-called "suction-effect" hose-coupler, specifi-

* Either direct infringement or contributory infringement.

cally defined by these claims in "combination" with **any old** grease pump, hose, and **any old** bayonet type grease-cup or "pin-fitting";—and notwithstanding that defendants' thus accused (old and unpatented) grease-cups or "pin-fittings" are also adapted and intended to have attached to them and to have lubricant forced into them by "**non**suction-effect" hose-couplers or "**non**suction-effect" grease-guns manufactured and sold by defendants (and others).

2. *Contributory* infringement of the "pin-fitting" claims (14 and 15) is charged by **only** reason of defendants' manufacture and sale of their **old** and **un**-patented ("**non**suctional") grease-guns, upon the assertion that the same are adapted and intended to be connected onto and to force lubricant into (*inter alia*), plaintiff's grease-cups or "pin-fittings" defined in detail in these claims;—and notwithstanding that defendants' thus accused **old** and **un**patented grease-guns are also adapted and intended to be connected onto and to force lubricant into other **non**-infringing "pin-fittings" manufactured and sold by defendants (and others).

THE COMMERCIAL SITUATION.

Pin-fittings on one hand and "grease-guns" on the other hand (the latter comprising a pump, a hose and a hose-coupler) were old in the art, as was the combination of pin-fitting and grease-gun (see *Lyman, et al., v. Bassick,* 18 Fed. (2d) 29 CCA 6th, involving the patent here in suit).

The specific pin-fittings defined in detail in claims 14 and 15 of the patent in suit were manufactured and widely distributed by plaintiff under its other Gullborg Patent No. 1,307,733 (not in suit). At the time of trial, more than 544,000,000 of the patented pin-fittings had been sold by plaintiff (R., p. 18).

The only purpose of plaintiff's pin-fittings (just as the pin-fittings of defendants and others) is to have a grease-gun attached to them from time to time (by means of a "bayonet" type hose-coupler) so that grease may be forced into the pin-fitting from time to time.

Without a grease-gun the pin-fitting is useless.

The specific "suction-effect" grease-guns defined, *inter alia,* in detail in claims 1, 2, 3, 4 and 8 of the patent in suit were manufactured and widely distributed by plaintiff under its patent in suit. At the time of trial, more than 17,000,000 of such alleged "suction-effect" grease-guns had been manufactured and distributed by plaintiff, and were in use largely in the hands of public greasing stations and garages.

Due to plaintiff's greater commercial enterprises (its extensive advertising, etc.), its unlimited financial resources, and due to a large extent to plaintiff's extensive and widespread campaign of litigation (well over three hundred suits filed) directed largely against the rank and file of small jobbers and dealers who could ill afford the expense of patent litigation or whose volume of business would not warrant such expense; — the sale and use of "**non**suction-effect grease-guns and the sale and use of **non**-infringing bayonet type grease-cups or so-called "pin-fittings" has not kept apace with the sale and use of plaintiff's "suction-effect" grease-guns and plaintiff's patented pin-fittings; with the result that plaintiff's "suction-effect" grease-guns and plaintiff's patented pin-fittings greatly outnumber the

"**non**suction-effect" grease-guns and the **non**-infringing pin-fittings manufactured and sold by defendants and others.

It is upon this commercial situation that plaintiff's charge of *contributory* infringement must ultimately rest because,

a) except for the preponderance of plaintiff's "suction-effect" grease-guns in use, defendants' intrinsically non-infringing pin-fittings would obviously have a wide enough opportunity to be lubricated by "**non**suction-effect" grease-guns sold by defendants (and others), so that the present charge of *contributory* infringement of claims 1, 2, 3, 4, and 8 would not even be arguable,

and

b) except for the preponderance of plaintiff's patented pin-fittings in use, defendants' intrinsically non-infringing ("**non**suction-effect") grease-guns would obviously have a wide enough opportunity to be connected onto the unpatented and **non**-infringing "pin-fittings" sold by defendants (and others), so that the present charge of *contributory* infringement of claims 14 and 15 would not even be arguable.

In reliance upon the opinions of several Circuit Courts of Appeal which had previously passed upon the patent here in suit (*Lyman v. Bassick,* 18 Fed. (2d) 29, CCA 6; and *Alemite v. Lubrair,* 62 Fed. (2d) 899, CCA 1), and held that the claims of the patent in suit, in order to be valid at all, must be so limited that the defendants' herein accused devices would not even *contributorily* infringe;—the validity of the patent in suit was conceded in the lower Courts in this cause. (Defendant-petitioner no longer con-

cedes the validity of the patent in suit, but on the contrary also denies validity.)

However, the District Court in its opinion (5 Fed. Sup. 940), not only held the patent valid, but also gave the claims thereof the broad interpretation theretofore condemned by the Courts of Appeal for the Sixth Circuit and First Circuit in the cases above cited* and since then again condemned by the Circuit Court of Appeals for the Sixth Circuit in *Hollingshead v. Bassick,* 73 Fed. (2d) 543 (all involving the same patent).

Based upon this broad interpretation of the claims of the patent in suit (which interpretation is clearly in conflict with the decisions of the Courts of Appeal for the Sixth Circuit and First Circuit), the District Court held that the sale of defendants' "**non**suction-effect" and intrinsically **non**-infringing grease-guns constituted *contributory* infringement of the pin-fitting claims 14 and 15 of the patent in suit, and that the sale of defendant's intrinsically **non**-infringing pin-fittings constituted *contributory* infringement of the "suction-effect coupler" claims 1, 2, 3, 4 and 8 of the patent in suit.

The Circuit Court of Appeals for the Third Circuit affirmed the decision of the District Court in a *per curiam* opinion rendered on December 18th, 1934 (74 Fed. (2d) 1019).

Both the district Court as well as the Circuit Court of Appeals for the Third Circuit relied for their respective decisions in this case upon the earlier opinion of the Circuit Court of Appeals for the Second Circuit on the same patent in the case of *Bassick v. Adams,* 52 Fed. (2d) 36.

Defendants filed a Petition for Rehearing, in which the more recent decision of the Circuit Court of Appeals for

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* Lyman, et al., v. Bassick, 18 Fed. 2nd 29 (CCA 6); Alemite v. Lubrair, 62 Fed. 2nd 899 (CCA 1).

the Sixth Circuit in *Hollingshead v. Bassick* (73 Fed. 2d, 543), was again called to the attention of the Circuit Court of Appeals for the Third Circuit and the conflict between the decision of said Circuit Court and the then recent decision of the Circuit Court of Appeals for the Sixth Circuit was also pointed out.

In defendants' Petition for Rehearing it was also pointed out that this Court had previously granted a petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit in the case of *Bassick v. Adams* (52 Fed. 2d, 39);—the order of this Court granting the certiorari being reported in 285 U. S. 531.

The Petition for Rehearing was, however, denied.

SPECIFICATION OF ERRORS.

The lower Courts:

1) Erred in holding that claims 14 and 15 of the Gullborg patent in suit are valid and at the time also entitled to an interpretation so broad as to be contributorily infringed by defendant-petitioners' "**non**suction - effect" grease-gun, or in failing to hold that claims 14 and 15, to be valid, must necessarily be limited to the suction-effect coupler or to the suction-effect grease-gun of the Gullborg patent, and that when so limited such claims are **not** contributorily infringed by defendant-petitioners' "**non**suction-effect" couplers or grease-guns.

2) Erred in holding that claims 1, 2, 3, 4 and 8, of the Gullborg patent in suit are valid and at the same time also entitled to an interpretation so broad as to be *contributorily* infringed by defendant-petitioners' admittedly **non**-infring-

ing pin-fitting, or in failing to hold that claims 1, 2, 3, 4 and 8, to be valid, must necessarily be limited to plaintiff's particular form of pin-fitting of the Gullborg patent, and that when so limited such claims are **not** *contributorily* infringed by defendant-petitioners' **non**-infringing type of pin-fitting.

3) Erred in holding claims 14 and 15 of the Gullborg patent in suit *broadly* valid as covering the pin-fitting element therein described in *combination* with **any** and every old type grease-gun and **any** and every old type coupler.

4) Erred in holding claims 1, 2, 3, 4 and 8, of the Gullborg patent in suit *broadly* valid as covering the "suction-effect" coupler therein described in *combination* with **any** and every old type of grease-gun and **any** and every old type of "pin-fitting."

5) Erred in not dismissing the Bill of Complaint for want of equity.

6) Erred in not denying to plaintiff-respondent (and in not condemning plaintiff-respondent's effort to secure) a monopoly of the old and unpatentable devices, implement or articles of commerce, **either.**

a) by giving the all-exclusive generic definition of the old and unpatentable devices included in the claims in suit a narrow interpretation limited merely to that form of such devices as actually disclosed in the patent in suit, in accordance with:
Radio Corp. v. 20th Century Radio Corp., 19 Fed. (2nd) 290 (CCA 2);
International Banding Mach. Co. v. American Bander Co., 9 Fed. (2nd) 606 (CCA 2);

Hopkins-Hawley Co. v. Holden, 273 Fed. 424 (CCA 2);

Fowler-Wolfe Co. v. McCrum-Howell Co., 215 Fed. 905 (CCA 2);

Alemite v. Lubrair, 62 Fed. (2nd) 899 (CCA 1);

Hollingshead v. Bassick, 73 Fed. (2nd) 543 (CCA 6).

or

b) by holding that the *combination* claims in suit are **not** infringed merely by the sale of the old and unpatentable devices or implements included in such claim, even though such old devices may then be used in conjunction with plaintiff's improved device also concluded in the claim; and that the *combination* claims can be infringed **only** by the manufacture or sale of the **gist** of plaintiff's invention or plaintiff's contribution to the art;—in accordance with such decisions as

Harvey Hubbel v. General Electric, 267 Fed. 564 (CCA 2);

Morgan Envelope Co. v. Albany Paper Co., 152 U. S. 425; 38 L. Ed. 500;

Carbice Corp. v. American Patents Development Corp., 283 U. S. 27; 51 S. Ct. 334.

or

c) by ruling that the unconditional purchaser of the allegedly inventive "pin-fittings" sold by plaintiff, or of the allegedly inventive "suction-effect" grease-guns sold by plaintiff, had an implied license to use in conjunction with either of these two devices, such other old and unpatentable bayonet type grease-cups or so-called "pin-fittings" and such other old and unpatentable "**non**suction-effect" grease-guns as others may make and sell;—

in accordance with such decisions as

Edison Electric Light Co. v. Peninsular L. P. of H. Co., 110 Fed. 831 (CCA 6);

Thomson-Huston Electric Co. v. Illinois Tel. Const., 152 Fed. 631 (CCA 7).

or

d) by holding the claims invalid in accordance with

General Electric v. Ohio Brass, 277 F. 917 (CCA 3);

Kodell v. Warren Telechron, 62 Fed. (2d) 692 (CCA 6);

Underwood v. Gerber, 149 U. S. 224; 37 L. Ed. 710.

A summary of the Arguments is contained in the subject-matter index to the Brief.

ARGUMENT

Point I.

Section 4888 of the Revised Statutes (U. S. C. Title 35, Sec. 33) clearly requires that the inventor, after describing in the specification and portraying in the drawings, the story of his alleged invention or discovery or improvement, shall **"particularly point out and distinctly claim"** the particular part, improvement or combination which in reality represents his invention or contribution to the art.

This statutory requirement is the reason for the existence of claims in Letters Patent. It is a fundamental and all-essential and wholesome requirement that the inventor, after describing his invention with as much surrounding environment as he chooses, shall set forth in one or more distinctly worded claims, the particular part which is his contribution to the art, so that it may be readily distinguishable, and set apart, from that which is merely the prior art or from those devices which are merely the mechanical environment or the commercial environment or the

utilitarian environment in which the inventor's allegedly improved device may be useful. The claims in suit all violate this statutory requirement.

In the case at bar, the combination of a grease pump, of a hose, of a hose-coupler, and of a grease-cup (to be temporarily engaged by the latter), was **admittedly old** prior to the filing of the application for the patent here in suit, as disclosed by the French Seng patent No. 468,869 (R., pp. 272-5) and as disclosed in plaintiff-respondent's earlier Gullborg patent No. 1,307,733 not in suit (R., pp. 212-14) and as also disclosed in the British Alley patent No. 21,893 of 1906, and plaintiff-respondent's own still-earlier Winkley patent No. Re. 14667, cited by the Court of Appeals for the Sixth Circuit in the case of *Lyman v. Bassick,* 18 Fed. (2d) 29,—adjudicating the Gullborg patent here in suit and also found in the record in the case of *Bassick v. Hollingshead* now before this Court under Docket No. 23 of the October Term of 1935.

Indeed, not only was the broad combination of a grease pump, hose, hose-coupler and grease-cup, old, but indeed, the use of a bayonet-type grease-cup and a bayonet-type hose-coupler in this very combination was also old prior to the filing date of the patent here in suit, as shown by plaintiff-respondent's earlier Gullborg patent No. 1,307,733 (R., pp. 212-14) and as shown by the British Alley patent No. 21,893 of 1906, above referred to.

Defendant-petitioners submit that the case at bar is on all fours with the *Harvey Hubbell v. General Electric case,* supra; the *Kodell v. Warren Telechron case, supra;* the *General Electric v. Ohio Brass case, supra;* the *Morgan Envelope v. Albany Paper case, supra;* the *Langan v. Warren Axe Tool,* 184 Fed. 720 (CCA 3); *In re Ratican,* 1911 C. D. 267; 162 O. G. 540 (CCA. D. of C.) and the *Carbice case, supra,* and the *Underwood v. Gerber case, supra.*

Plaintiff's contribution to the art, or plaintiff's improvement (if any there be) is in the internal construction of plaintiff's hose-coupler or conduit-coupler, and in the internal construction of plaintiff's bayonet-type grease-cup or so-called "pin-fitting", and it is **not** in any alleged *combination* of either of these two devices with the old grease-pump or hose, nor with the old and unimproved hose-coupler, nor with the old and unimproved grease-cup.

Taking claims 8 and 15 of the Gullborg patent in suit as typical of the two groups of claims in issue, the claims, analyzed, mean the following:—

Coupler Claim 8

The meaning of the claim language:—	**The Language of the Claim:—**
	"The combination with"
This is merely **any** automobile, industrial machine or farm tractor, or other machine.	"apparatus having a part to be lubricated"
This is the oil passageway or lubricant hole drilled or formed in the body of the machine for conveying the lubricant from the outside of the machine to some bearing on the inside of the machine.	"a conduit for conducting lubricant to said part"
This is *any* **old** (or new) grease cup or so-called "fitting"	"a coupling member secured to the end of said conduit and provided with a spring-pressed valve closure"

This is *any* old (or new) grease pump or "grease-gun"	"means for supplying lubricant to said conduit comprising"
The conventional pump chamber or reservoir of the conventional "grease-gun" with the usual pump outlet	"a receptacle provided with a discharge outlet"
This is any one of the many old hose couplers or conduit couplers to be found on the many old grease-guns of the prior art.	"a second coupling member connected with said discharge outlet"
This may be the screw-threaded joint or the conventional "bayonet" joint of the couplers of grease-guns of the Alley British patent No. 21893 of 1906 referred to by the Court of Appeals for the Sixth Circuit in *Lyman et al v. Bassick,* 18 Fed. (2d) 29, and particularly in the first column on page 34, or it may be the claw-type coupling means of plaintiff-respondent's earlier grease-gun *combination* patent No. Re. 14667 to Winkley, also referred to by the Court of Appeals for the Sixth Circuit.	"means for detachably uniting said coupling members, and"

This alone is plaintiff's alleged inventive contribution upon which this entire claim rests, and this allegedly self-cleansing spring-pressed washer in the coupler is contained wholly within the coupler and can at best, merely represent an improvement in the coupler.	"means for sealing the joint between said coupling members and for removing excess lubricant from the adjacent ends thereof when said coupling members are uncoupled."

Grease-Cup Claim 15

The meaning of the claim language:—	**The Language of the Claim:—**
	"The combination with"
This is in every detail exactly the same grease-cup covered, per se, by claims 4 and 5 of plaintiff-respondent's earlier Gullborg patent No. 1,307,733 (not in suit) and is, in fact, almost verbatim the language of these claims of the earlier patent.	"a grease-cup comprising a tubular body member having a closure seat, a closure, a pin extending through said tubular member and from both sides thereof, a spring confined between said pin and closure and tending to hold said closure on its seat, of"
Any **old** (or new) grease pump or grease-gun of whatever construction	"a grease pump having"
Any **old** hose	"a discharge conduit, and"
Any **old** bayonet-type coupler, to wit, both plain-	"means coacting with the ends of said pin for detach-

tiff's allegedly improved "suction-effect" coupler on which claims 1, 2, 3, 4 and 8 depend, as well as defendant-petitioner's admittedly **old** and unpatentable "**non**suction-effect" coupler.

ably connecting the discharge end of said conduit with said grease cup."

Thus,

defendant-petitioner's admittedly old and unpatentable "**non**suction-effect" grease-gun was held *contributorily* to infringe **only** Gullborg claims 14 and 15 which depend upon the plaintiff's alleged grease-cup improvement and recite the grease-gun only in the broadest generality, while

defendant-petitioner's admittedly old and unpatentable bayonet-type grease-cups or so-called "pin-fittings" were held *contributorily* to infringe **only** Gullborg claims 1, 2, 3, 4 and 8 which depended upon the alleged coupler improvement and which, in turn, recited the grease-cup in the broadest generality.

It will readily be realized that there is hardly an ancient or modern mechanical or electrical device, implement, tool or apparatus which can realize its normal utility without conjoint use with some other device, implement or tool. Thus, the familiar electrical wall outlet, of whatever internal construction, has no utility whatever unless and until it receives the two blades or prongs of the contact plug, which enter its contact chambers for the well-known electrical engagement used on all sorts of domestic and industrial electrical appliances, from bridge lamps to toasters, electric fans, vacuum cleaners, etc. Thus, the allegedly improved electrical outlet or so-called "base" in the *Harvey Hubbell v. General Electric case, supra,* was certainly use-

less until there was brought into "combination" with the old contact plug or cap having the contact blades or prongs, as such "*combination*" was claimed in the patent there in suit. Had the patentee there had the astuteness of plaintiff-respondent in the case at bar, he might undoubtedly have included in the same combination, broadly, a flexible electric cord or conductor connected to and emanating from the contact-plug and an electrical appliance operatively connected with the other end of the electrical cord, because, by the same token, even the electric base or outlet and the contact plug or cap were likewise inoperative and useless unless current actually flowed through the contact made between the two of them, and through an electrical cord and an electrical appliance or uten[illegible]h the cord was intended to feed with electricity.

Thus, if plaintiff-respondent's theory of patent claims, and if plaintiff-respondent's theory of contributory infringement are both tenable, then it would be a simple matter indeed for some large electrical concern or public utility concern to arrange over a period of a few years, for the installation in any given area or territory, of some improved electrical wall outlet or electrical socket containing some meritorious or some trivial internal constructional improvement, and then, by claiming such improved electrical socket in "combination" broadly with any old two-bladed electrical contact plug and with any old electrical conductor connected therewith, and with any old electrical appliance or utensil operatively connected to the free end of the electrical conductors, the public would undoubtedly become *contributory* infringers of such combination patent when plugging into such improved electrical wall outlet or electrical socket, the old toaster, bridge lamp, electric fan, vacuum cleaner, waffle iron, etc., by means of the old two-bladed electric plug or cap.

In that case, just as it may be conceded in the case at bar, the improved electrical wall outlet or electrical socket may make a superior contact with the old two-bladed electric plug and thereby improve and facilitate the electrical connection and perhaps even improve the general convenience of using the various electrical utensils.

That such a situation is not altogether visionary and far-fetched, but in fact can easily be developed, is shown by such very recent cases as *Kodell Electric v. Warren Telechron Clock Co.*, 62 Fed. (2nd) 692. In this case the invention was in a certain master clock installed at central electric power houses which generate commercial alternating current for the public, for more accurately timing the cycles of the current so that there shall always be exactly sixty cycles in each second;—thereby to obtain a more accurate timing of the literally hundreds of thousands of admittedly old synchronous-motor type electric clocks which were "plugged in" on the electric lines of the electric power company supplying that territory. The claim there too, was **not** for the master clock which improved the timing of the cycles of the alternating current, but was indeed, for a combination of that master clock invented by the patentee, together with the generator, the electrical conductor wires spreading across the country and the old synchronous-motor type electric clock;—all with the result that the maker and seller of admittedly old synchronous-motored electric clocks suddenly became an contributory infringer because his clocks were brought into the alleged "*combination*" with the new master clock located at the power station, and indeed forming a very useful improvement in the timing of the cycles of the electric current. The Court of Appeals for the Sixth Circuit there very promptly struck down the patent as failing to claim only the inventor's alleged invention in a regulator device, and as obviously attempting

to monopolize the old electric clocks by their improper inclusion in the claims of the patent on a current regulator.

Precisely that type of claim was also presented in *General Electric v. Ohio Brass, supra,* where the allegedly improved electrical insulators were claimed in combination broadly with any old telegraph pole, having the old conventional cross-arms and the old electrical conductors which were supported by these new and improved insulators from pole to pole, so that upon the fortuitous circumstance of the substantial adoption of the patentee's improved insulator, the future sale of electric wire by others would have constituted *contributory* infringement of these so-called "combination" claims.

Likewise, the toilet-paper cabinet in the *Morgan Envelope v. Albany Paper case, supra,* was without utility in a sense, without a roll of paper operatively disposed therein and cooperatively related thereto.

So too, the allegedly improved refrigerating package or housing in the *Carbice case, supra,* was without utility and was incomplete in a sense, without the presence of the old solid carbon dioxide operatively disposed therein, and there, as in the case at bar, the wide commercial distribution of the allegedly improved package was to become the basis for the monopoly on dry ice, on the theory of *contributory* infringement.

This, perhaps, well illustrates the wholesomeness of the statutory requirement that* in the claims of the patent, the inventor shall separate the wheat from the chaff, and shall separate his actual contribution to the art from the prior-art as well as from the complementary or environmental devices which give his improved device its utility.

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* regardless of how much that is within the public domain he has included in his specification and drawings.

The many attempts to confuse and co-mingle the inventor's property with the things which are in the public domain, in violation of the above quoted parts of R. S. 4888, is shown by the long line of cases on this point, of which but a few have been cited above.

The courts have endeavored to deal with this type of situation in several different ways. Thus, sometimes the courts have in a sense limited the application of the doctrine of contributory infringement, as in the Harvey Hubbell case, the Morgan Envelope case and the Carbice case;—to instances where the defendant appropriates the *gist* of the invention. In other cases the courts have held the claims limited beyond their bare language so as to exclude defendant's device, and to permit a holding of non-infringement, as in the *Radio Corporation v. 20th Century case, supra;* the *International Banding Machine v. American Bander, supra; Alemite v. Lubrair, supra,* and *Hollingshead v. Bassick, supra.* In still other cases the courts held that the unconditional sale by the patent owner of the device containing the *gist* of his invention, carried with it an implied license for others to sell the other old parts of the improper "combination" claims as in the *Edison Electric v. Peninsular case,* and the *Thomson-Huston v. Illinois Telephone Co. case, supra.*

It is respectfully submitted, however, that the sounder and more fundamental course is to hold such improper claims invalid, as in the *General Electric v. Ohio Brass case;* the *Kodell v. Warren Telechron case;* the *Langen v. Warren Axe case;* in the *Underwood v. Gerber case;* and perhaps as in the *Carbice case,* on rehearing (283 U. S. 420; 51 Sup. Ct. 496) because the claims are obviously invalid, as failing particularly to point out and distinctly to claim the alleged invention, as required by Section 4888 of the Revised Statutes,

but on the contrary, confuse and co-mingle the patentee's property with things which have long been within the public domain.

ARGUMENT

Point II.

Plaintiff's attempted use of the improper form of the claims in suit, to monopolize admittedly old and unpatentable devices, implements, commodities and articles of commerce (none of which contain any of plaintiff's alleged improvements) is violative of the spirit and letter of the anti-trust laws, and particularly Section 3 of the Clayton Act, 38 Stat. L. 731, which makes it unlawful to sell any machine, device or commodity, whether allegedly improved and patented, or whether unpatented; on the condition that the purchaser of such machine, device or commodity shall "not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the * * * seller, where the effect of such sale * * * or such conditions * * * may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

Lord v. Radio Corp., 28 Fed. (2d) 257 (CCA 3) (certiorari denied 278 U. S. 648);

Motion Picture Patents Co. v. Universal Film Co., 243 U. S. 502;

Carbice v. American Patent Development, 283 U. S. 27.

More than 544,000,000 of plaintiff-respondent's separately patented* pin-fittings had been sold up to the time of the trial of this case.

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* through the earlier Gullborg patent not in suit.

These pin-fittings had been sold by plaintiff-respondent largely through the automobile manufacturer who had equipped his cars at the factory with these grease-cups or pin-fittings and is indicative, in a measure, of the millions of automobiles that thus became equipped with these grease-cups or pin-fittings of this particular internal construction.

Plaintiff-respondent also sold millions of its "suction-effect" grease-guns or grease-dispensing pumps or compressors with its allegedly improved "suction - effect" bayonet coupler;—both to the car manufacturer as well as to the many thousands of public garages and greasing stations.

If by an adjudication of contributory infringement, the defendant and other manufacturers of **old** grease-guns or compressors and **old** couplers will be barred from the sale of such equipment to public greasing stations and garages, the plaintiff will have thereby secured an additional monopoly and destroyed all competition in the sale of these **un**patented grease-guns (compressors and couplers) and there will be delivered into the hands of the plaintiff-respondent the entire system of the public greasing of all automobiles equipped with plaintiff's patented pin-fitting.

Likewise, if by an adjudication of contributory infringement, the defendant and other manufacturers of **old** bayonet type grease-cups will be barred from the sale of such grease-cups to automobile manufacturers and to the public at large, the plaintiff will have also secured an additional monopoly and destroyed all competition in the sale of these **un**patented bayonet type grease-cups.

Thus, the dominant position of the plaintiff as a manufacturer of both grease-cups or "pin-fittings" and as a manufacturer of grease-guns, and the large number of its "pin-fittings" attached to the automobile produced today, and the large number of its grease-guns in the hands of

public garages, service stations and greasing stations, will, if the plaintiff-respondent's contentions are sustained, make it impossible for the manufacturer of the **un**patented and **non**infringing "pin-fittings" and the manufacture of the **un**patented grease-guns to furnish the one to the car manufacturer or car owner, and to furnish the other to the public greasing stations, because of the likelihood, on one hand, that such **un**patented and **non**-infringing "pin-fittings" so furnished to the car manufacturer or car owner, will have attached to them (at some greasing station) the plaintiff's grease-gun with the "suction-effect" coupler, in alleged contributory infringement of Gullborg claims 1, 2, 3, 4 and 8, which specify this particular "suction-effect" coupler but are not limited to any particular construction in a bayonet-type grease-cup or "pin-fitting", and because of the likelihood on the other hand that the **un**patented and "**non**-suctional" grease-guns which defendant and others may supply to garages and greasing stations may also be used in connection with and for the lubrication of plaintiff's patented "pin-fittings" in alleged contributory infringement of Gullborg claims 14 and 15, which specify those "pin-fittings" but are not limited to any particular kind of grease-gun.

Thus, if plaintiff-respondent's contentions are sustained, then plaintiff-respondent and anyone else having the financial ability and dominating commercial position, can effect with absolute immunity, the very thing expressly prohibited by the anti-trust laws, particularly Section 3 of the Clayton Act. Thus, if plaintiff-respondent's contentions are sustained, any one of the vast array, if not in fact, the greatest majority of all devices, commodities, implements or articles of commerce, can be readily monopolized in violation of both the letter and spirit of Section 3 of the Clayton Act, by merely claiming such devices, commodities or

articles of commerce, in generic terms, *in combination*" with some other complementary or environmental device with which it is normally used, and placing some meritorious or some trivial constructional improvement in such other complementary or environmental device to give "novelty" to the claim.

Thus, the precise monopolistic scheme which plaintiff-respondent could not effectuate by private contract, notwithstanding its ownership of a hose-coupler invention, or notwithstanding its ownership of a grease-cup invention, it could effectuate with immunity by what is, in effect, a government contract in respect to an invention, that is, Letters Patent for an invention.

It is respectfully submitted that the patent laws were never meant to develop monopolies of the **old** and **un**-patentable implements or commodities, and that the anti-trust laws expressly prohibit such monopolies.

The practical form in which the question is presented in the present case is the situation of a car owner whose car was equipped by its manufacturer with a set of the patented pin-fitting. Whether there was also placed in the tool box of the car at the time it was sold one of the small Alemite hand guns fitted with a coupler for attachment to the pin-fittings is not important because this car owner, in common with most car owners, prefers to have his car greased at public greasing stations where the grease is furnished from large compressors through a conduit which may be coupled to each of the pin-fittings on the car in the course of the greasing operation.

Now if the decision of the Third Circuit Court of Appeals is to prevail, in the case at bar, the car owner stands in an anomalous position. If the unpatented grease-guns (compressors and couplers) with which the greasing stations are equipped happen to be of a manufacturer other

than that of the plaintiff (who owns the patent on the combination of the patented pin-fitting with the necessary old pump and coupler), then both the car owner and the service station proprietor will each be infringers of the combination patent and the manufacturer who supplied the greasing station with its compressors and couplers will be a contributor to that infringement; whereas if the greasing station proprietor had purchased his compressors from the plaintiff, then no question of infringement would be involved. In other words, the ordinary car owner is put to the duty of first finding out where the greasing station proprietor has purchased his compressor in order to determine whether he, the car owner, may make the ordinary and only possible use of the pin-fittings on his car.

In thus failing to limit the plaintiff's monopoly (under claims 14 and 15) to the patented pin-fittings and extending it to the sale of unpatented grease-guns and couplers, which are the ordinary tools of the art and which must necessarily be used with the pin-fittings in order that they may have any utility at all, the Third Circuit Court of Appeals has awarded a monopoly not contemplated or justified by the patent law.

We are aware of no applicable decision of this Court on this precise question of patent law, but believe it to be one that should be decided by this Court.

Thus, the Circuit Court of Appeals for the Third Circuit has erroneously decided in effect that the seller of a patented article may, by virtue of the ownership of another patent covering that article in combination with the ordinary devices or things with which it must necessarily be used, impose as a condition of such sale and the right to use that article in the only way it can be used that such article shall not be used in combination with said devices or things sold by a competitor; such decision is in conflict

with Section 3 of the Act of October 15, 1914, 38 Stat. L. 731, known as the Clayton Act, and is also in conflict with the decision of this Court in the case of *Carbice Corporation of America v. American Patents Development Corporation and another*, 283 U. S. 27.

It is obvious that the owner of an automobile equipped with the patented pin-fittings has a right to use them with a gun and coupler. If, as we contend, the automobile owner has acquired by reason of his purchase the free and unrestricted right to use the pin-fitting in the only way it can be used, to wit, with a coupler and a grease-gun, then the plaintiff who owns both the patent on the pin-fitting No. 1,307,733 (not in suit) and the patent on the so-called combination of that pin-fitting with a coupler and a gun, covered by patent No. 1,307,734 could not, when once it has sold a pin-fitting and the purchaser had acquired the free and unrestricted right to use it by reason of his purchase, destroy or delimit that right because the plaintiff also owned a so-called combination patent comprising that pin-fitting and any old coupler and gun with which the pin-fitting must necessarily be used.

The sale by plaintiff of separate service compressors to public greasing stations shows that the use of the pin-fitting by the car owner was not to be confined to its use in conection with the small hand gun that might be supplied with the car. The free and unrestricted right of the purchaser to use the pin-fittings at public greasing stations where the high pressure compressors could be effectively applied to them cannot be thwarted by the circumstance that the plaintiff may have caused to be placed in the tool box of the car at the time it was sold one of the small Alemite hand guns.

If the right of the car owner as the purchaser of the pin-fittings to have them combined with a service compres-

sor and coupler at a public greasing station is dependent upon the fact that such compressor and coupler were furnished by the plaintiff, then the sale of those pin-fittings was necessarily upon the condition that the purchaser should not use the compressors and couplers of a competitor, and hence in violation of Section 3 of the Clayton Act.

Moreover the plaintiff's large separate sales of these service compressors are with the intent and for the purpose that their purchasers will use them upon the patented pin-fittings on the cars brought to the public garages and greasing stations to be lubricated. The purchaser of a service compressor and coupler from the plaintiff is thus permitted to use them with the patented pin-fitting, whereas no such permission or license is accorded to the purchaser of these unpatented elements from a competitor; in fact, as here, the competitor is charged with contributory infringement. In other words, the sale by plaintiff of such service compressors and couplers is in effect upon the understanding that the garage man and the greasing station proprietor will not purchase and use the compressors and couplers of a competitor, such understanding being sanctioned and enforced under the lash of the patent on the combination whereby all competition in the sale of compressors and couplers for use on the widespread and separately patented pin-fittings will be effectively suppressed.

Such a limitation of the use of the pin-fittings except with guns and couplers of plaintiff's manufacture is in violation of Section 3 of the Clayton Act and obviously the fact that the plaintiff has gotten a patent on the combination with the pin-fitting of a coupler and compressor does not relieve the plaintiff from the charge of undertaking to control, in violation of law, the purchase and sale of the expedients which must necessarily be employed in connection with the pin-fitting.

In *Lord, et al., v. Radio Corp. of America* (C. C. A. 3, 28 F. (2d) 257; certiorari denied, 278 U. S. 648), it was held that the condition for a license under a combination patent that the licensee should purchase one of the elements from the licensor was void and unenforcible as being in violation of Section 3 of the Clayton Act. So also in the present case, a condition that a car owner or the proprietor of a greasing station must purchase the gun and coupler from the plaintiff in order to get the right to inject grease into the patented pin-fittings is likewise void and unenforcible as being in violation of Section 3 of the Clayton Act. As the Third Circuit Court of Appeals said in that case (page 260):

> "The inclusion in a patented combination of an unpatented element does not give the patentee of the combination a monopoly of each element and the exclusive right to make, use and sell that element independent of the combination."

In other words, claims 14 and 15 of the patent in suit do not give the plaintiff here the exclusive right to make and sell to garages and public greasing stations the unpatented grease-guns and coupler elements of the patented combination.

Moreover the decision of the Third Circuit Court of Appeals in the case at bar, in the present case is in conflict with this Court's decision in the Carbice case (*supra*). In that case the patent was on a transportation package consisting of a protective casing of insulating material with solid carbon dioxide and a freezable product arranged in a certain relative position therein. The owner of the patent was engaged in the sale of solid carbon dioxide and restricted the use of such a package to those who purchased the carbon dioxide element from it. The case arose upon

the charge of contributory infringement against the defendant who had sold solid carbon dioxide for use in a transportation package like that described in the patent and this Court held that the patent owner could not use its patent as a basis for compelling the purchase from it of one of the unpatented elements embraced within the patent claim, citing *Morgan Envelope Co. v. Albany Paper Co.*, 152 U. S. 425.

This Court in its decision in the Carbice case has denied the attempted distinction between its earlier decision in the Morgan Envelope case in which the element furnished by the alleged contributory infringer was a passive element or in the nature of supplies and the Carbice case where the solid carbon dioxide was a dynamic element, holding that these distinctions are without legal significance and that the patent owner has no right to control the use of unpatented materials even though an element of a patented combination. So also in the present case the sale of the unpatented compressor and coupler cannot be monopolized by the owner of the combination patent and made a condition for the rightful use of the patented pin-fitting so that all manufacturers of grease compressors and couplers will be excluded from a market which will involve the application of grease from an ordinary grease-gun or compressor through a Gullborg patented pin-fitting.

ARGUMENT

Point III.

The claims in suit are fundamentally invalid because they purport to claim, and plaintiff has asserted them as claiming, an alleged "*combination*" of one device containing plaintiff's allegedly improved structural features; with three or four other separate and distinct and **admittedly** old and unpatentable devices which merely constitute the old environment in which plaintiff's improved device finds its utility and in which alleged "combination", like devices without the alleged constructional improvement, have also found their utility in the past.

Langen v. Warren Axe & Tool Co. (CCA 3); 184 Fed. 720;

In re Ratican, 1911 C. D. 267 (CCA Dist. of Columbia) 162 O. G. 540;

Backstay Co. v. Hamilton, 262 Fed. 411 (CCA 1);

Heald v. Rice, 104 U. S. 737;

General Electric v. Ohio Brass, 277 Fed. 917 (CCA 3);

Kodell v. Warren Telechron, 62 Fed. (2d) 692, (CCA 6);

Underwood v. Gerber, 149 U. S. 224.

The improper inclusion of the admittedly old and unpatentable complementary or environmental devices in the claims of the patent in suit in so-called "*combination*" with the other device containing plaintiff's allegedly improved structural features, was not an innocent mistake or inadvertence, but was obviously part of a carefully studied long-

range plan and scheme to develop, under the guise of a patent, the kind of monopoly expressly prohibited by Section 3 of the Clayton Act.

ARGUMENT

Point IV.

The Circuit Court of Appeals for the Third Circuit (as well as the District Court which it affirmed) has erroneously given the claims of the patent in suit a scope greater than the asserted invention

by holding on one hand that claims 1, 2, 3, 4 and 8 cover* any **old** (or new) bayonet type grease-cup or "pin-fitting" regardless of its construction, if such **old** (or new) grease-cup or "pin-fitting" is momentarily coupled with, connected to, or lubricated by plaintiff's "suction-effect" grease-gun as defined in these claims, and by holding on the other hand, that claims 14 and 15 cover* any **old** (or new) grease-gun, regardless of its construction (and including "**non**suction-effect" grease-gun) if such **old** (or new) grease-gun is momentarily coupled with or connected to plaintiff's "pin-fitting" forming the subject of its earlier-filed patent 1,307,-733 not in suit;

in direct conflict with the following decisions of the other Circuit Courts of Appeals adjudicating the patent here in suit:

Lyman, et al., v. Bassick, 18 Fed. 2nd, 29 (CCA 6);
Alemite v. Lubrair, 62 Fed. 2nd, 899 (CCA 1);
Hollingshead v. Bassick, 73 Fed. 2nd, 543 (CCA 6).

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* on the theory of "contributory" infringement.

* On a theory of "contributory" infringement.

The Court of Appeals for the Sixth Circuit in *Lyman, et al., v. Bassick*; 18 Fed. 2nd, 29, adjudicated the patent here in suit against a series of six separate defendants in six separate suits, some of which defendants were making "bayonet" type grease-cups or so-called "pin-fittings" containing plaintiff's specific patented construction, and some of which were making grease-guns with the so-called "suction-effect" couplers. The Court of Appeals for the Sixth Circuit in that decision (though sustaining the claims of the Gullborg patent here involved) clearly indicated that claims 14 and 15 of the Gullborg patent were valid only if limited, by construction, to the "suction-effect" grease-gun disclosed in the Gullborg patent and that the claims 1, 2, 3, 4 and 8 were valid only if limited, by construction, to plaintiff's specific "pin-fitting" construction also disclosed in the Gullborg patent.

In that case (*Lyman, et al., v. Bassick*) a broader construction of the Gullborg claims was not necessary or required because the defendants there had appropriated the *gist* of plaintiff's alleged contribution to the old grease-gun, to wit, the "suction-effect" coupler and had also appropriated plaintiff's alleged contribution to the old bayonet type grease-cup or "pin-fitting" to wit, the peculiar disposition of the valve-closing spring between the valve-closure and the bayonet-pin.

Based chiefly upon a misconstruction of the opinion of the Court of Appeals for the Sixth Circuit in *Lyman, et al., v. Bassick*, 18 Fed. 2nd, 29, though in an apparent effort to follow that decision of the Sixth Circuit Court of Appeals, the Court of Appeals for the Second Circuit, and some District Courts, have since rendered decisions which are, in fact, in conflict therewith;—influenced, no doubt, by the fact that plaintiff urged or argued a misinterpretation of

said opinion the Court of Appeals for the Sixth Circuit in *Lyman, et al., v. Bassick, supra.*

Plaintiff's misinterpretation of the original opinion of the Court of Appeals for the Sixth Circuit in *Lyman, et al., v. Bassick,* was made possible by the fact that six different suits were determined by this one appellate opinion, and by the further fact that after the mandates went down some of the defendants (for reasons unknown) did not contest or consented to the entry of decrees in the District Court enjoining not only "suction-effect" grease-guns and infringing "pin-fittings," but enjoining also "**non**suction-effect" grease-guns and **non**-infringing "pin-fittings" on a broader construction of the claims than given in the appellate opinion, and on the theory of contributory infringement since then advanced by plaintiff in this and many other suits.

It was upon the strength of these final decrees in the District Courts (following a mandate) that the opinion of the Court of Appeals for the Sixth Circuit was successfully misconstrued by plaintiff in subsequent suits in which the Courts endeavored to follow said original appellate opinion of the Sixth Circuit or the opinion of some other Court which previously had followed said original opinion of the Sixth Circuit.

That the original opinion of the Court of Appeals for the Sixth Circuit in *Lyman, et al., v. Bassick,* 18 Fed. 2nd, 29, was not intended to be construed as plaintiff had urged in many courts thereafter, is evident from the more recent decision of the same Circuit Court of Appeals in *Hollingshead v. Bassick,* 73 Fed. 2nd, 543, wherein there were no defendants' "pin-fittings" involved at all, but in which there were involved two defendants' "**non**suctional" grease-guns (different from each other in detailed construc-

tion, however), and as to one of which "**non**suction-effect" grease-guns plaintiff conceded the "**non**suctional" character and charged infringement **only** of claims 14 and 15 which do not by their bare language recite the "suctional" feature.

In the recent decision of the Court of Appeals for the Sixth Circuit in *Hollingshead v. Bassick, supra,* that Court of Appeals clearly held that claims 14 and 15 *in order to be valid* must necessarily be limited to the "suction-effect" grease-guns or to grease-guns with a "suction-effect" coupler of the kind shown in the Gullborg patent;—the clear inference being that **unless so limited these claims are necessarily invalid as involving no invention.**

Plaintiff-respondent in its petition for writ of certiorari to this Court in said Hollingshead case which is now before this Court (under docket number 23 of the October Term, 1935, has **not** petitioned this Court to review that part of the decision of the Court of Appeals for the Sixth Circuit which has so limited claims 14 and 15 but has confined its petition for writ of certiorari wholly to a factual question relating to the Hollingshead's other grease-gun involved in said Hollingshead suit, to wit, whether said other grease-gun was, in *fact,* of the "suctional" or "**non**suctional" character.

By so avoiding this question as to the scope of claims 14 and 15, as now again determined by the Court of Appeals for the Sixth Circuit (in its petition for writ of certiorari to this Court), plaintiff has conceded the correctness of the decision of the Court of Appeals for the Sixth Circuit in *Hollingshead v. Bassick,* 73 Fed. 2nd, 543, as to the limitations which must be imposed upon the scope of claims 14 and 15 in order that they may be valid.

The Court of Appeals for the Sixth Circuit in *Hollingshead v. Bassick,* 73 Fed. 2nd, 543, did not have before

it for consideration any defendant's "pin-fittings", and, therefore, that Court was not required to and, therefore, did not determine that same question of law with respect to claims 1, 2, 3, 4 and 8. There can be no doubt however that the same principle of law is applicable to both groups of claims, and that if the Court of Appeals for the Sixth Circuit had had before it also a non-infringing "pin-fitting" on a charge of contributory infringement of the "suction-effect" grease-gun claims 1, 2, 3, 4 and 8, it would undoubtedly have likewise held that these claims must likewise be limited to plaintiff's specific "pin-fitting" construction, or that they are **not** infringed by a "pin-fitting" construction **not** embodying those structural features of "pin-fitting" in which plaintiff's asserted grease-cup novelty resides.

The Court of Appeals for the First Circuit in *Alemite v. Lubrair,* 62 Fed. 2nd, 899, reached a conclusion substantially the same as that reached by the Court of Appeals for the Sixth Circuit, that is, that the combination claims 14 and 15 are either limited to plaintiff's "suction-effect" grease-gun or if broadly construed are invalid.

The Court of Appeals for the First Circuit also clearly pointed out the conflict between plaintiff's broader contention and the Clayton Act and the decisions of this Court in the Carbice case, *supra,* and in the *United Shoe Machinery Corporation v. United States* case, 252 U. S. 451, 465, and the decision of the Court of Appeals for the Third Circuit in *Lord v. Radio Corporation,* 28 Fed. 2nd, 257.

Subsequent to the decision of the Court of Appeals for the First Circuit in *Alemite v. Lubrair,* 62 Fed. 2nd, 899, the defendant in that case (for reasons unknown) consented to a mandate and to a final decree holding claims 14 and 15 infringed by the **non**suctional grease-guns which in the

published opinion for the Court of Appeals for the First Circuit were held **not** to infringe these claims.

This court granted a writ of certiorari to the Court of Appeals for the Second Circuit in *Bassick v. Adams,* 52 Fed. 2nd, 36 (CCA 2);—the one appellate opinion which sustained plaintiff's broad contentions in the case at bar. Plaintiff-respondent settled this case out of court and the successful petitioner in that cause thereupon withdrew its appeal.

It is submitted that the decisions of the Courts of Appeals for the Sixth Circuit and the First Circuit above referred to are correct and well founded, and the correctness of such decisions is in effect conceded by plaintiff-respondent by:

a) plaintiff-respondent's failure to raise the question of the scope of claims 14 and 15 in its recently filed petition in this Court for writ of certiorari to the Court of Appeals for the Sixth Circuit in the case of *Hollingshead v. Bassick* (*supra*).

b) plaintiff-respondent's failure to petition this Court for a writ of certiorari in the case of *Alemite v. Lubrair,* 62 Fed. 2nd. 899, and its unusual disposal of that case out of court.

c) plaintiff-respondent's disinclination to permit the same question to be reviewed by this Court in the case of *Adams v. Bassick,* 285, U. S. 531.

ARGUMENT

Point V.

Except for plaintiff's repudiation of the originally asserted inventive basis of the claims of the patent in suit, by its wide-spread (many hundreds of suits) assertion of the claims in suit against the admittedly old and unpatentable devices and implements of the prior art;—the claims in suit might possibly have been saved from invalidity, and the patent thus salvaged for plaintiff for whatever intrinsic merit there may be in the allegedly improved structural features in one of the four devices recited in the claims; by following any one of the three lines of cases or decisions which, in infringement suits, have denied to plaintiffs the monopoly of the old and unpatentable devices without holding the claims invalid however;—

a) by either giving the generic reference to the old devices in the claims such a limited interpretation as would exclude from their scope the defendant's admittedly old devices, as was done in

Radio Corp. v. 20th Century Radio Corp., 19 Fed. (2nd) 290 (CCA 2);

International Banding Mach. Co. v. American Bander Co., 9 Fed. (2nd) 606 (CCA 2);

Hopkins-Hawley Co. v. Holden, 273 Fed. 424, (CCA 2);

Fowler-Wolfe Co. v. McCrum-Howell Co., 215 Fed. 905 (CCA 2);

Alemite v. Lubrair, 62 Fed. (2nd) 899 (CCA 1);

Hollingshead v. Bassick, 73 Fed. (2d) 543 (CCA 6).

or

b) by holding that the so-called "*combination*" claims would not be infringed by the defendant's sale of any old devices which may be included in the claims generically, but will be held infringed only if the defendant appropriates the inventive part of the claims or the **gist** of the claims as in the cases of

Harvey Hubbell v. General Electric, 267 Fed. 564 (CCA 2);

Morgan Envelope Co. v. Albany Paper Co., 152 U. S. 425; 38 L. Ed. 500;

Carbice Corporation v. American Patents Development Corp., 283 U. S. 27; 51 Sup. Ct. 334.

or

c) by holding that the unconditional purchasers of plaintiff's allegedly improved device have an implied license to purchase from others (including defendants) the old expedients or the old implements of prior art with which that improved device is normally used, as in the cases of

Edison Electric Light Co. v. Peninsular L. P. of H. Co., 110 Fed. 831 (CCA 6);

Thomson-Huston Electric Co. v. Illinois Tel. Constr., 152 Fed. 631 (CCA 7).

ARGUMENT

Point VI.

The case at bar is **not** one which would justify any indulgence in favor of the validity of the claims upon any one of the three types of holdings or decisions of non-infringement above set forth, but the Court is justified in striking at the root of the evil and holding the claims invalid under the well established principles set forth in

In re Ratican; 1911 C. D. 267; 162 O. G. 540 (Court of Appeals, D. C.)

Langen v. Warren Axe, 184 Fed. 720 (CCA 3);

General Electric v. Ohio Brass, 277 Fed. 917 (CCA 3);

Kodell v. Warren Telechron, 62 Fed. 2nd) 692 (CCA 6);

Underwood v. Gerber, 149 U. S. 224; 37 L. Ed. 710;

Carbice v. Patents Developments (on rehearing), 283 U. S. 420; 51 Sup. Ct. 496.

a) because the patent in suit was apparently not intended by plaintiff to be used for the purpose for which patents are intended, but was merely an instrument for the assertion and development of an illegal monopoly over a whole field of old and unpatentable devices;

b) because plaintiff has repudiated the inventive basis of the claims by suing manufacturers of admittedly old devices of the prior art;

c) because plaintiff has violated the spirit, if not in fact the letter, of the disclaimer statutes (R. S. Sec. 4917—U. S. C. Title 35, Sec. 65; and R. S. Sec. 4922—U. S. C. Title 35, Sec. 71) because sub-

sequent to the decision of the Sixth Circuit Court of Appeals in *Lyman et al., v. Bassick,* 18 Fed. (2nd) 29, holding **claim 12** of the patent here in suit **invalid** and giving **claims 1, 2, 3, 4, 7, 8, 14 and 15 a restricted** or limited interpretation, and while filing a formal disclaimer as to the invalidated claim 12, plaintiff continued to assert (in hundreds of suits based upon this patent) a monopoly far broader than that represented by the disclaimed claim 12, and far broader than the monopoly adjudged as plaintiff's under the other claims which were held valid by the Court of Appeals for the Sixth Circuit upon a limited interpretation.

d) because plaintiff, by taking literally hundreds of consent decrees and decrees pro confesso and broad injunctions based thereon; against financial inferior jobbers, dealers and tradesmen throughout the field and from coast to coast, and by thus automatically eliminating these hundreds of jobbers and dealers of automotive equipment, as trade outlets for the old and unpatentable and non-infringing grease-guns, has shown most forcefully the fallacy of endeavoring to salvage for plaintiff's benefit patent claims fundamentally invalid and violative of the essential principles of patent law and plaintiff has thus also shown most forcefully that an invalid patent or a patent whose scope is in reality limited, but whose claims are of improper form may become a distinct menace to an entire industry far beyond any of the many monopolistic schemes and trade-restraining schemes so far encountered by the courts under the Anti-Trust Laws.

ARGUMENT

Point VII.

The practical effect of sustaining plaintiff-respondent's contention as to the validity and scope of the claims in suit as urged in this case by plaintiff-respondent, is to perpetuate in plaintiff a monopoly of substantially **all** lubricating equipment, both in the automobile industry or in the automobile field as well as in the field of industrial and farm machinery, because the very same array of both **old** (or new or yet unborn) grease-guns can be monopolized by plaintiff almost indefinitely and without limit of time, merely by re-patenting the same **old** grease-guns in *combination with* either another hose-coupler or conduit-coupler containing any trivial coupler improvement, or another grease-cup or "fitting" containing some trivial internal improvement, or by re-patenting the same old grease-cup in combination with a new coupler and an old grease pump, and then through the commercial dominance already achieved in the field, bring about a quick distribution of the improved part and then charge others with contributory infringement by selling the old and unimproved parts, such as the old pump, or the old grease-cup, on the theory that such old devices would again inevitably be brought into use with plaintiff's improved coupler or improved grease-cup, as the case may be, and that such conjoint use would then make the seller of the same old grease-cup or the seller of the same old grease-gun again a *contributory* infringer under such newly patented "combination" claims.

That this would be the ultimate effect of sustaining plaintiff-respondent's untenable position with respect to the validity and scope of the claims in suit, will become

evident if the Court will take judicial notice at this time of the more recent and already extensive series of infringement suits which have been instituted by plaintiff-respondent under just such a collection of more recent patents, each of which re-patents the old combination of grease pump, hose, coupler and grease-cup; with some structural improvement in but one of these four devices; and the other three of the four devices or implements claimed in "combination" being again the same old pump, the same old hose, and the same old grease-cup covered by the patent here in suit. Thus, for instance, if the Court will refer to the record in Case No. 23 of the October Term of 1935 now pending before the Court, and entitled "The Bassick Manufacturing Company, Petitioner, versus The R. M. Hollingshead Company, Respondent", it will find that in that case the defendant was charged with contributory infringement, for instance, of claims 14 and 15 of Gullborg patent No. 1, 307,734 by virtue of its manufacture and sale of an old and unpatented grease-gun with an old unpatented bayonet coupler, and that precisely the same grease-gun, merely with an alternative or interchangeable nozzle was also charged to constitute contributory infringement of claims 2, 3 and 5 of Zerk patent No. 1,475,980 involved in this Hollingshead case, because the Zerk patent, though subsequent to the Gullborg patent No. 1,307,734, again re-patents the combination of pump, coupler, and grease-cup based again merely upon another structural improvement in the coupler or nozzle part of the old combination.

Likewise, in the District Court of the Western District of Pennsylvania, in equity suits Nos. 2983 and 3041, this same plaintiff-respondent is charging this same defendant-petitioner (and others) with contributory infringement of another one of plaintiff's many recent "combination" patents, to wit, Manzel patent No. 1,459,662, which re-pat-

ents the old combination of pump, coupler and grease-cup, and there again, the grease pump accused as constituting the "contributory" infringement, is the same grease pump which in the case at bar is accused as constituting the contributory infringement of claims 14 and 15 of the Gullborg patent No. 1,307,734 merely with another coupler member or nozzle member.

So too, in these same two suits in the Western District of Pennsylvania, this same defendant-petitioner is accused of contributory infringement of another one of plaintiff-respondent's still more recent "combination" patents, to wit, Butler patent No. 1,593,791, which again re-patents the old combination of pump, hose, coupler and grease-cup, and the charge there again is that defendant-petitioner sells an admittedly old grease-cup with the charged intention that such old grease-cup be used in conjunction with plaintiff-respondent's admittedly old grease pump having a certain allegedly improved hose-coupler of the Butler patent.

And so, the Court may take judicial notice of the already extensive litigation based upon many of plaintiff's other and much more recent "combination" patents, each in turn re-patenting the old combination of pump, hose, coupler and grease-cup, and each in turn based upon some constructional improvement in a coupler, or some constructional improvement in one of the other parts, to wit, Davis patent No. 1,401,765 of December 27th, 1921; Fesler patent No. 1,408,573 of March 7th, 1922.

Each of these patents and many others more recently issued to plaintiff, re-patents the old combination based upon improvement in one element, and each will further perpetuate into the more distant future, plaintiff's monopoly of the same grease pump and the same old grease-cup and the same old hose, if plaintiff-respondent's theory of "combination" claims, and if plaintiff's theory of "con-

tributory'' infringement is to prevail at one and the same time. The Davis and Fesler patents are cited among the many, because they happen to disclose and they broadly claim (in combination) precisely the same grease-cup disclosed in the patent here in suit, and specifically set forth in claims 14 and 15 of the patent here in suit, and also separately patented to plaintiff in Gullborg patent No. 1,307,733, not in suit.

The further practical effect of sustaining plaintiff-respondent's contentions in this case, would be not only to petpetuate in plaintiff-respondent the continued monopoly of the entire lubricating equipment industry which it now dominates almost one hundred percent, but also to open up every other industry or line of commerce to the development of similar monopolies based upon any trivial invention improperly claimed.

CONCLUSION

In conclusion, it is respectfully submitted that the decision of the Court of Appeals for the Third Circuit in the case at bar should be reversed, and that

a) the claims in suit must either be held invalid as not defining or as not limited to plaintiff's alleged inventive contributions, but as also improperly including many admittedly old devices or implements:

General Electric v. Ohio Brass, 277 Fed. 917 (CCA 3);

In re Ratican, 1911 C. D. 267; 162 O. G. 540 (C. C. A. D. of C.);

Langen v. Warren, 184 Fed. 720 (CCA 3);
Kodell v. Warren Telechron, 62 Fed. (2d) 692 (CCA 6);
Underwood v. Gerber, 149 U. S. 224.

b) or the claims must be held not infringed

1) either by construing the pin-fitting claims as though also limited to the specific suction-effect grease-gun disclosed in the patent, and by construing the suction-effect claims as also limited to the specific pin-fitting disclosed in the patent as in *Alemite v. Lubrair,* 62 Fed. (2d) 899 (CCA 1) and *Hollingshead v. Bassick,* 73 Fed. (2d) 543 (CCA 6).

2) or by holding the claims not infringed because defendants have admittedly **not** appropriated the **gist** or inventive part of the claims, in accordance with *Harvey Hubbell v. General Electric,* 267 Fed. 564 (CCA 2); *Morgan Envelope v. Albany Paper,* 152 U. S. 425; *Carbice v. American Patents Development,* 283 U. S. 27.

3) or by holding that the unconditional sale by plaintiff of its pin-fittings under its earlier patent No. 1,307,733 (not in suit) carries with it an implied license to connect with it any old grease-gun, though made by a competitor, and that plaintiff's unconditional sale of its suction-effect grease-guns sold by it under claims 1, 2, 3, 4 and 8 of the patent in suit, carries with it the implied license to use them on any old and **un**improved and **un**patentable bayonet-type grease-cups of competitors, in accordance with *Edison Electric v. Peninsular,* 110 Fed. 831 (CCA 6) and *Thompson Houston v. Illinois,* 152 Fed. 631 (CCA 7).

It is further respectfully submitted that in view of all the circumstances of the case and in view of the evils of improper claims, as demonstrated herein, the safer and sounder course is to strike at the root of the evil by holding the claims invalid because they clearly violate the first fundamentals of patent law, and are contrary to the essential purpose of the patent grant, and also because they are obviously intended (by plaintiff) not to secure an invention to the plaintiff, but to perfect in plaintiff (under the guise and cloak of an invention and Letters Patent) an illegal monopoly of old and unpatentable commodities which is expressly condemned by the Anti-Trust Laws of the United States.

Respectfully submitted,

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